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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,837	10/18/2001	Robert J. Greenberg	S100-DIV2	1149

28284 7590 01/09/2007  
SECOND SIGHT MEDICAL PRODUCTS, INC.  
12744 SAN FERNANDO ROAD  
BUILDING 3  
SYLMAR, CA 91342

EXAMINER
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OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/039,837

Applicant(s)

GREENBERG ET AL.

Examiner

Frances P. Oropeza

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/23/06 (Petition).  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 269-300 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 269-300 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Application Revived***

1. It appears a petition was filed on 5/23/06 to revive this previously abandoned application. The petition was granted 10/12/06.

***Claim Rejections - 35 USC § 102***

2. Claims 269-271, 276, 278-280, 285, 287-290, 295 and 297-299 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckmiller (US 6400989). Edkmiller discloses a visual prosthetic comprising an encoder (read as including the video receiver, video procession unit, and external communications unit), an implanted carrier (read as the internal communication unit) and implanted micro-contacts located in the retina (read as the plurality of electrodes) (figure 2; col. 3 @ 49-59; col. 3 @ 66 – col. 4 @ 10; col. 8 @ 54-61; ).

As to claims 270, 271, 279, 280, 289 and 290, the operational data includes electrode current (col. 5 @ 60-64).

As to claims 276, 285, 295 and 299, electrical recordings from the retina are communicated (col. 3 @ 49-50; col. 4 @ 18-26; col. 7 @ 23-32; col. 11 @ 23-35).

***Claim Rejections - 35 USC § 103***

3. Claims 272-275, 277, 281-284, 286, 291-294, 296 and 300 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckmiller (US:6400989) in view of Michelson (US 4628933). As discussed in paragraph 2 of this action, Eckmiller discloses the claimed invention except for the operational data including:

electrode impedance (claims 272, 281 and 291),  
electrode voltage (claims 273, 274, 282, 283, 292 and 293),  
an indication that a compliance voltage has been reached (claims 275, 284 and 294), and  
an indication of power level (claims 277, 286, 296 and 300).

Michelson teaches the composition of an ideal visual neuron stimulating signal comprises electrode impedance, electrode voltage, an indication that a compliance voltage has been reached (read as threshold), and an indication of power level, these elements included for the purpose of taking into account the physiological and/ or operating factors (impedance, voltage and power) to provide comprehensive feedback that enables creation of an optimum visual stimulation signal. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used electrode impedance, electrode voltage, an indication that a compliance voltage has been reached, and an indication of power level in the Eckmiller system in order to provide effective bi-directional communication signals that enable induction of visual perception in individuals where the optical pathway of the eye and the neural response of the retina are intact (col. 2 @ 21-24; col. 3 @ 65 – col. 4 @ 17; col. 4 @ 18-33; col. 4 @ 52-65; col. 5 @ 31-34).

#### *Drawings*

4. Figures 4 and 5 are objected to under 37 CFR 1.83(a) because the rectangular boxes are not labeled as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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***Declaration***

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because the Robert J. Greenberg signature is not dated.

***Information Disclosure Statement***

6. One of the references, WO 81/01512, of the information disclosure statement filed 2/7/02 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The information disclosure statement, with the noted reference marked through, has been placed in the application file, but the information referred to therein has not been considered. The submitted abstract does not meet the "concise explanation of the relevance".

***Statutory Basis***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frances P. Oropeza  
Patent Examiner  
Art Unit 3766

*FR*  
*12/10/06*

  
Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3766